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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR   | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/024,583      | 12/21/2001  | Subraman Rao Cherukuri | 24734               | 2492             |

20529 7590 07/22/2005

NATH & ASSOCIATES  
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EXAMINER

COE, SUSAN D

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1655

DATE MAILED: 07/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/024,583

Applicant(s)

CHERUKURI ET AL.

Examiner

Susan D. Coe

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 May 2005 and 13 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,3-15,38 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,3-15,38 and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. The amendment filed May 5, 2005, has been received and entered. The arguments filed January 13, 2005 are considered herein. The text of those sections of Title 35, U.S. Code, not included in this action can be found in a prior Office action.
2. Claims 2 and 16-37 have been cancelled.
3. Claims 1, 3-15, 38, and 39 are pending.
4. In the paper dated January 29, 2003, applicant elected with traverse hydrogenated starch hydrolysate and lactitol for species A, partially hydrogenated soybean oil for species B, lecithin for species C, dietary fibers for species D, carrageenan for species E, hydroxypropylmethyl cellulose for species F, and psyllium for species G.

### ***Claim Rejections - 35 USC § 102***

5. Claims 1, 3-7, 10-15, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by US Pat. No. 5,342,631 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not anticipate the stated claims because the reference does not teach a single embodiment that contains both hydrogenated starch hydrolysate (HSH) and maltitol and that the reference does not teach the claimed amounts of the polyols. However, claim 33 of the reference specifically claims using the sweeteners maltitol, lactitol, and HSH in the composition. Claim 33 depends from claim 22 which states that are present in amounts up to 50%. Thus the reference clearly teaches a composition containing the claimed amounts of the claimed polyols.

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6. Claims 1, 3-5, 7-15, 38, and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by EP 0 273 001 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not anticipate the stated claims because the reference does not teach a single embodiment that contains both HSH and maltitol and that the reference does not teach the claimed amounts of the polyols. However, this is not persuasive because the reference does teach that all of HSH, maltitol and lactitol can be used in the composition (see page 5, line 23 and page 5, lines 40-42). The HSH is used in amounts from 35% to 89% (see last paragraph of page 2), and the maltitol and lactitol are used in amounts up to 45% (see page 5, lines 40-42). This encompassed within the explicit teaching of the reference is a combination of HSH with maltitol and/or lactitol. Since the reference encompasses this embodiment, this embodiment is considered to be part of the inventive concept of the reference. The authors of the reference clearly envisioned this embodiment or these ingredients would not have been taught in the reference. In addition, the reference amounts fall within the claimed amounts. Thus, the reference also anticipates the claimed amounts of the polyols.

Applicant also argues that the reference does not anticipate the claimed invention because the reference is directed to nougats which are aerated to obtain a specific consistency and density while the presently claimed composition is not directed to such a composition. However, applicant is arguing limitations that are not in the claims. Applicant's claims are directed to a sugar-free composition that contains the same ingredients that are taught by the reference. Applicant's claims only specify the ingredients and their amounts. No structural limitations

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have been placed in the claims. Thus, the reference properly anticipates the stated claims because the reference teaches a composition that comprises the same ingredients as claimed.

***Claim Rejections - 35 USC § 103***

7. Claims 1, 3-7, 10-15, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 5,342,631 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that the reference does not render obvious the stated claims because the reference is directed to a gum while the claims are directed to a soft-chew that only contains up to 10% of a viscosity enhancer. Applicant also argues that since the prior art is directed to a gum rather than a soft-chew, a person of skill in the art would not look to the reference to arrive at the claimed ingredient amounts. This is not persuasive for several reasons. Firstly, applicant's claims use the broad transitional phrase "comprising." As discussed in MPEP section 2111.03, "The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps...". Thus, the reference can include non-claimed elements are still encompass the claimed invention. Secondly, the claims rejected in this rejection do not contain the limitations regarding viscosity enhancer. Thirdly, applicant is arguing structural limitations that are not in the claims. The reference teaches ingredients that comprise the same ingredients as claimed. Thus, the reference is considered to properly teach the claimed invention.

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8. Claims 1, 3-5, 7-15, 38, and 39 rejected under 35 U.S.C. 103(a) as being unpatentable over EP 0 273 001 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues against this rejection for the same reasons as in the traversal of the 102 rejection based on this reference. Therefore, the rejection is considered valid for the reasons stated above.

9. Claims 1, 3, 4, 6-15, 38, and 39 are rejected under 35 U.S.C. 103(a) as being unpatentable over US Pat. No. 4,778,676 for the reasons set forth in the previous Office action.

All of applicant's arguments regarding this ground of rejection have been fully considered but are not persuasive. Applicant argues that this reference does not teach the claimed polyols. However, substituting one known polyol for another would be within the knowledge of a person of ordinary skill art. All polyols are known to have similar properties in regards to taste and their function in compositions. Therefore, a person of ordinary skill in the art would be motivated to use lactitol, maltitol, and HSH in the sugar-free composition of US '676.

In addition, applicant argues that the reference requires ingredients that are not claimed. However, as discussed above, applicant's claims use the broad transitional phrase "comprising." As discussed in MPEP section 2111.03, "The transitional term "comprising", which is synonymous with "including," "containing," or "characterized by," is inclusive or open-ended and does not exclude additional, unrecited elements or method steps...". Thus, the reference properly teaches the stated claims because applicant's claims encompass unrecited elements.

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10. No claims are allowed.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Susan Coe whose telephone number is (571) 272-0963. The examiner can normally be reached on Monday to Thursday from 9:30 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The official fax phone number for the organization where this application or proceeding is assigned is (571) 273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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Any inquiry of a general nature or relating to the status of this application or proceeding can be directed to the receptionist whose telephone number is (571) 272-1600.

*Susan D. Coe*  
7-19-05

Susan D. Coe  
Primary Examiner  
Art Unit 1655